

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

TRANSCRIPT OF MARKMAN HEARING
BEFORE THE HONORABLE JOSEPH A. DICLERICO JR.

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1 P R O C E E D I N G S
23 The Court has before it for consideration a
4 Markman hearing in civil case 17-cv-483-JD, Steyr Arms,
5 Inc. versus Sig Sauer, Inc.6 THE COURT: Kellie I believe informed you that
7 we are going to allow 40 minutes each for your arguments
8 and then if you would like, you could have an additional
9 ten minutes for rebuttal.

10 MS. CARROLL: Thank you, your Honor.

11 THE COURT: All right? And we'll hear first
12 from Steyr.13 MR. HENNEBERGER: Good morning, your Honor,
14 Glenn Henneberger on behalf of Steyr Arms.15 So what I've handed up to you, your Honor, is
16 just a handout of the slides that we presented, a copy
17 of the patent which I'm sure you probably have, and then
18 also a plastic housing from a Sig Sauer pistol which is
19 one of the accused products. That was just so you could
20 kind of hold something in your hand. I know at the
21 scheduling conference you wanted to maybe see something
22 or have one of the pistols. All right, so that's what
23 you have before you.24 All right, so we're going to go through the
25 subject matter of the patent. Then we have five claim
terms that are at issue here. First one being this

1 multifunction metal part. Second one being a means for
2 supporting a trigger mechanism. Third one being a
3 transverse hole for a shaft. Fourth, rear wall with a
4 recess. And control means for locking. And that's for
5 locking the barrel in the barrel slide.

6 So the patent subject matter, when we look at
7 the patent, the abstract is a pretty good description of
8 what the patent is all about. The multifunction metal
9 part is a frame or base on to which a lot of the
10 component, all the component parts of the pistol are
11 mounted. And what they're doing there is they're
12 putting that in a plastic housing so that they can make
13 the pistol lighter, and use plastics instead of metals.

14 Now, one of the interesting things here in
15 this patent is the way that this multifunction metal
16 part is assembled as a complete unit and then put into
17 the plastic frame as a unit and then held in place by a
18 single disassembly lever shaft in combination with
19 projections on the back of the multifunction metal part
20 and recesses in the plastic housing.

21 So that was a new sort of unique way of
22 assembling the pistol, making it easy to disassemble for
23 repair and maintenance, and reassemble quickly.

24 THE COURT: So are you saying it's the
25 multifunction metal part includes all of the moving

1 parts that are attached to it?

2 MR. HENNEBERGER: Yes, your Honor. So, I have
3 an exploded view next -- well, let's look at what -- if
4 we look here at the slide that's up on the screen now,
5 we've kind of colored this so you can see it a little
6 bit easier. It's a difficult drawing to, you know, to
7 understand because it's a cross section of a lot of
8 component parts in the pistol.

9 So here the pink is the housing which is what
10 you have up there from the Sig Sauer pistol. That's the
11 plastic housing. That includes the trigger guard and
12 the housing for the magazine. And then this orange
13 outline here is the multifunction metal part. It's a
14 cross section of it. And then there's also, you'll see,
15 a blue number 14, the reference number 14 runs up to
16 this blue, that's the disassembly lever shaft which is
17 in a hole in the multifunction metal part, and then in
18 the rear you have a projection 11, which fits in a
19 recess in the back of the plastic housing.

20 So, the multifunction metal part when it's
21 inserted into the plastic housing has two points of
22 contact. So it's got the recess, the projection and the
23 recess, and then the disassembly lever shaft holding it
24 in the housing. And these are some of the things that
25 we're going to be talking about. The transverse hole is

1 what the disassembly lever shaft goes through and, you
2 know, we're going to get some of these other things that
3 are all in the claim. And that's what the claim is.
4 The claim is a combination of a lot of different
5 component parts put together, so you can't really kind
6 of like separate them apart and say, you know, we're
7 just going to look at this little limitation. You
8 really have to look at the claim as a whole and see how
9 all the parts cooperate with each so you can understand
10 what the claim is all about.

11 So now this is an exploded view of a Steyr
12 pistol that uses this configuration with multifunction
13 metal part. We've mirrored this because to show you
14 some, when I get to the next slide, you'll see the Sig
15 Sauer pistols. So the boxes around this multifunction
16 metal part that has the blue insert in the middle, that
17 blue insert is the control means, and we'll talk more
18 about that later on, and then you see at the back it has
19 two little extension --

20 THE COURT: Is that the bridge? Is that the
21 bridge?

22 MR. HENNEBERGER: Yes, that's the bridge.

23 THE COURT: The blue.

24 MR. HENNEBERGER: The blue is the bridge.

25 THE COURT: And that's part of this -- part of

1 the multifunction metal part?

2 MR. HENNEBERGER: Yes. Yes. The
3 multifunction metal part includes that control means.

4 THE COURT: All right.

5 MR. HENNEBERGER: Then we have the green
6 projections on the back of the multifunction metal part
7 which fit in recesses in the rear wall of the plastic
8 housing. And then the pink is the disassembly lever
9 shaft. And you'll see that the plastic housing has
10 holes in it that are transverse and aligned with the
11 holes in the multifunction metal part. We have the dash
12 line going through those holes to show how that
13 disassembly lever shaft is inserted through the housing
14 and the multifunction metal part.

15 THE COURT: So, the multifunction metal part
16 as I look at it here is a, it's a single part.

17 MR. HENNEBERGER: Correct.

18 THE COURT: It's one piece.

19 MR. HENNEBERGER: It's one -- it's one single
20 component part -- well, in the prior art which was
21 discussed in the patent, they were talking about a Glock
22 pistol, and in that there were smaller assemblies that
23 you had to put together and then insert them into the
24 plastic housing. The invention is directed to taking
25 that multifunction metal part and then taking all these

1 other component parts, the trigger, you see that in the
2 box that shows some trigger components, there's all
3 sorts of little springs and things that go on, I mean,
4 you know, pistols are fairly complicated. So what the
5 invention is all about was taking these base or frame
6 multifunction metal part, putting all these bits and
7 pieces together having a complete unit, and then taking
8 that unit and put it in --

9 THE COURT: And put it in.

10 MR. HENNEBERGER: Right. And we'll talk about
11 that with the claims, and it's actually in the summary
12 of the invention. The first sentence of the summary
13 says, which is right after the figures --

14 THE COURT: I have a large copy of it.

15 MR. HENNEBERGER: Okay. So the first sentence
16 says, according to the invention the foregoing object,
17 the object of the invention is to provide a pistol which
18 allows use of plastics and which provides higher
19 provision and simple assembly. And now the foregoing
20 object is achieved wherein a single multifunction metal
21 part is removably inserted into the housing and on the
22 multifunction metal part guides to the barrel slide or
23 form and the elements of the trigger are mounted and
24 guided. And then it says, you know, it can be easily
25 moved in and out of the housing for maintenance and

1 repair.

2 THE COURT: Right. So, it is a single one-
3 piece part.

4 MR. HENNEBERGER: You put all the pieces on to
5 the multifunction metal part and then you take that one
6 assembled component part and you stick it into the
7 housing, notwithstanding the barrel and barrel slide.

8 THE COURT: What I'm trying to clarify is, is
9 the multifunction metal part what's shown here with the
10 blue bridge in it?

11 MR. HENNEBERGER: Correct.

12 THE COURT: And then you add other parts to
13 it. Those are not part of the multifunction metal part.

14 MR. HENNEBERGER: Well, they're included --

15 THE COURT: Right?

16 MR. HENNEBERGER: -- on to it when it's
17 inserted into the housing.

18 THE COURT: These are mounted on to the part.

19 MR. HENNEBERGER: Right, correct. Yes, this
20 is a single component part.

21 THE COURT: All right.

22 MR. HENNEBERGER: All right, now this is an
23 exploded view of the Sig Sauer P250, one of the accused
24 products, and you'll see we've color-coded it the same
25 way. They have the disassembly shaft, this pink goes

1 through the holes in the plastic housing, they have a
2 projection on the back of the multifunction metal part
3 which fits in a recess in the plastic housing, and then
4 they have a blue pin ten which gets inserted on to the
5 multifunction metal part before that gets put into the
6 plastic housing.

7 Now, once you put that pin on to the
8 multifunction metal part, you put it in the housing,
9 it's not removable once it's inserted and put into the
10 pistol housing.

11 And then this is the P320. Same thing. This
12 is assembled with the pin already on the multifunction
13 metal part. Shows it being able to be inserted into the
14 plastic housing. And that's the plastic housing that
15 you have up there, your Honor.

16 All right, so the claim is the claim we have
17 the five highlighted limitations at issue. First one
18 being the multifunction metal part. I think we've
19 spoken a lot about it already. I'm not sure if you have
20 anymore questions about that. It is a single component
21 part. Everything gets assembled on to it and then it's
22 inserted into the housing.

23 And then here Sig Sauer's proposed
24 construction is a one-piece metal frame that serves
25 multiple functions. I think we're pretty close on what

1 we, you know, on what it is. It's a metal frame that
2 has a lot of component parts on it. I guess the dispute
3 is whether you can read the term one piece into the
4 claim limitation which is not there. We never use the
5 term one piece in the specification. You're not
6 supposed to read limitations into the claims that aren't
7 there. You are supposed to construe the claim in view
8 of the specification, but you're not, you know, your
9 role as the judge is not to read limitations into claim.
10 The Federal Circuit has abundant case law on this.

11 THE COURT: But it does say a single.

12 MR. HENNEBERGER: Yes. But if you read it in
13 the context of what they're talking about, they're
14 talking about if you look at the background, and they're
15 talking about a Glock Model 17, so in the middle of that
16 paragraph it says the mountings of the parts for the
17 trigger and the control parts for locking the barrel are
18 individually inserted as assemblies into the housing
19 resulting in dimensional inaccuracies.

20 So they're saying that's a disadvantage. And
21 then they solve that problem by creating this single
22 component part to mount all these things on and insert
23 into the housing as a complete unit.

24 THE COURT: Right. These are all -- at the
25 bottom of the detailed description it says, in

1 consequence all these parts can be mounted on the
2 multifunction part before the complete unit is finally
3 inserted into the housing.

4 MR. HENNEBERGER: Correct.

5 THE COURT: But we're talking about a single
6 one-piece part to which all these other parts are added,
7 and then it is inserted into the --

8 MR. HENNEBERGER: Right, as opposed to
9 individual parts, yes, in the prior art, I agree, yes.

10 All right, so, our claim construction is here,
11 what we're proposing. So it's a single part rather than
12 individual component parts. And then these other
13 limitations are just things that are already in the
14 claim itself if you follow through the claim. It says
15 that the multifunction metal part includes a projection,
16 guides for the barrel slide, means for supporting the
17 trigger mechanism, has the transverse hole, and it also
18 includes the control means for locking the barrel in the
19 barrel slide.

20 So we can move on to the second limitation at
21 issue, means for supporting the trigger mechanism. And
22 again here I have a slide which is annotated and the
23 multifunction metal part includes a series of holes to
24 accept a series of pins to mount the trigger and the
25 trigger components on to the multifunction metal part.

1 Again, we're not real far off on the claim construction
2 here. Sig Sauer proposes that it's a hole or other type
3 of recess and it's capable of receiving insert. I'm not
4 really sure where this insert comes from.

5 What you're supposed to do -- a
6 means-plus-function claim is kind of a strange animal.
7 You're not really reciting structure, you're reciting a
8 function. And then the structure is, your job is under
9 the statute to look at the specification and find what
10 structure corresponds to the function being claimed.

11 THE COURT: Well, you agree that the function
12 here is to support the trigger mechanism; right?

13 MR. HENNEBERGER: Correct. So when you look
14 at the specification that we've never used the term
15 insert, so when you look it's a series of holes and
16 pins. Holes in the multifunction metal part and pins to
17 hold those things on to the multifunction metal part.

18 Where we run astray here is under the statute
19 it says that we're entitled to, that our claim is
20 entitled to cover structure, the structure disclosed in
21 the specification corresponding to the function and
22 equivalents thereof, and that's by statute. That's
23 literal infringement. That's not doctrine of
24 equivalents. That's literal infringement of a
25 means-plus-function claim. Statutory includes

1 equivalents thereof.

2 Now, the determination of whether something is
3 an equivalent to what's --

4 THE COURT: That for the infringement.

5 MR. HENNEBERGER: That's an infringement
6 question which is a question of fact.

7 THE COURT: We don't deal with that.

8 MR. HENNEBERGER: You don't deal with that at
9 this point.

10 THE COURT: Correct.

11 MR. HENNEBERGER: And that's where we
12 disagree. They seem to think that it's your job now to
13 determine what the equivalents are.

14 THE COURT: Doesn't this patent really
15 disclose a single embodiment of the invention?

16 MR. HENNEBERGER: No, not necessarily, because
17 there are alternatives. They say the multifunction
18 metal part can be made of individual parts welded
19 together or stamped. There's also a sentence at the end
20 that says it's not, you know, we're not necessarily
21 limiting the scope of the patent to this particular
22 thing. There is, for example, it says you can use a
23 sear or it could use a hammer, you know, there are
24 alternatives in the patent itself. It's not just one
25 embodiment. I mean, there's one embodiment shown, but

1 there's other things described.

2 THE COURT: Both sides have studiously avoided
3 the Beretta decision.

4 MR. HENNEBERGER: I haven't avoided it, your
5 Honor, I provided it to you, but it's yours to do with
6 what you want.

7 THE COURT: What's wrong with the way this
8 claim, this disputed claim was handled --

9 MR. HENNEBERGER: My only issue with the judge
10 down in Alabama was that I think she went a little too
11 far on the means for supporting the trigger mechanism.
12 I think it's a little broader than what she interpreted.
13 It's really just the holes in the multifunction metal
14 part and the pins in the holes. She kind of got lost in
15 the weeds about all the other things that are in the
16 specification.

17 THE COURT: All right.

18 MR. HENNEBERGER: But other than that I agree
19 with her, you know, with her decision.

20 THE COURT: All right.

21 MR. HENNEBERGER: And so I think we've covered
22 what our issue is with the means for supporting the
23 trigger.

24 Now, here is again, you know, this is the
25 multifunction metal part and housing are each provided

1 with a transverse hole which receives a shaft for
2 connecting the housing and the multifunction metal part
3 together.

4 So this is a cross-section from figure one
5 taken through the center of the disassembly lever shaft.
6 You see reference number one is the plastic housing;
7 reference number, I think 16 is the hole in the plastic
8 housing; 15 is the hole in the multifunction metal part;
9 and 14 is the disassembly lever shaft which goes through
10 the aligned transverse holes.

11 So, Sig Sauer's proposed construction, I think
12 they just forgot half the claim. You know, they forgot
13 that it says that each of the housing and the
14 multifunction metal part each include a hole. So here
15 their proposed construction is just a hole in the
16 housing which is not what the claim says.

17 THE COURT: Well, there would have to be a
18 hole that goes through both.

19 MR. HENNEBERGER: Right, well, the claim says,
20 it says a hole, each includes a hole.

21 THE COURT: Right, right.

22 MR. HENNEBERGER: So that's our construction.
23 Our proposed construction is that each includes a hole,
24 not just one.

25 And then the other --

1 THE COURT: The hole has to be for a shaft. A
2 hole can't, I mean, the hole doesn't support anything.

3 MR. HENNEBERGER: Right, the hole is not doing
4 anything, right.

5 And then where we disagree again is the shaft.
6 You know, you're not supposed to read limitations into
7 the claim, but you are suppose to construe the claim in
8 view of the specification as one of ordinary skill in
9 the art would understand it.

10 So, in this particular instance the shaft in
11 the specification, we never call it a shaft. It's
12 always the disassembly lever shaft. And then I've put
13 up a slide here that shows it in the, you know, there's
14 a figure and it shows where the holes are, shows the
15 disassembly lever shaft, and then it also says that, you
16 know, on the second, the lower portion it says the
17 disassembly lever shaft is inserted into the holes of
18 the multifunction metal part and the holes in the
19 plastic housing. The projections and the disassembly
20 lever shaft hold the multifunction part firmly in the
21 housing. And that's what I was talking about earlier
22 when we were discussing the invention, how it has the
23 two points of holding that multifunction metal part in
24 the housing. So it's the combination of the projection
25 at the back of the multifunction metal part and the

1 recess of the housing and the disassembly lever shaft.

2 And now the disassembly lever shaft also has
3 another function. So, not only does it hold the
4 multifunction metal part in the housing, but it also is
5 the way that you lock the slide and barrel on to the
6 pistol. And that's a well-known term of, you know,
7 that's how you do it. I mean, when we saw it in the Sig
8 Sauer they had the same disassembly lever shaft or they
9 call it a, I think they call it a disassembly lever.
10 They don't use the word shaft.

11 THE COURT: But it serves the function of not
12 only disassembly but also assembly.

13 MR. HENNEBERGER: Right. So it serves the two
14 functions of being able to assemble the pistol together
15 once you put the multifunction metal part into the
16 housing and you put the barrel and the barrel slide on
17 to the multifunction metal part guides, then you insert
18 the disassembly lever shaft, you turn it and it locks
19 all the component parts together, and then you have a
20 complete pistol. So by having this one lever you can
21 take the whole pistol apart. That's really, you know,
22 one of the ingenious things about what these inventors
23 figured out.

24 So here our proposed construction is, you
25 know, the housing and multifunction metal part both

1 include aligned transverse holes to receive the
2 disassembly lever shaft.

3 Now, I want to talk about that again. You
4 construe the claim in view of the specification. We
5 never just call it a shaft. It's always a disassembly
6 lever shaft. I think anybody skilled in the art looking
7 at the specification and reading it would understand
8 that that's what the claim is directed to, not just some
9 rod-shaped shaft.

10 All right, so now we've gone to the rear wall
11 with the recess. Again, I don't think we're far off
12 here. I don't think it needs to be construed. I think
13 a jury can look at a projection on a component part and
14 say, yeah, that's a projection, and can look at the
15 recess in a housing and say, yes, that's a recess. The
16 judge isn't necessarily required to construe every word
17 in every claim. I think this is clear on its face. I
18 don't think it really requires construction. And the
19 judge in Alabama also agreed that it didn't require
20 construction.

21 So, I think that's where we disagree amongst
22 ourselves here. They're presenting to you that it
23 should be some, you know, take a dictionary and replace
24 the words with more words, and I don't think that's
25 necessary.

1 And again, they use the word insert. I don't
2 know, you know, we've never used the word insert
3 anywhere in the specification, so.

4 Now we're moving on to the final one already,
5 which is the control means for locking the barrel and
6 the barrel slide. You know, this is a, this is
7 something that we disagree on most of it.

8 So Sig Sauer proposes it's a bridge-like
9 portion of a multifunction metal part, and they say that
10 locking the barrel and the barrel slide is indefinite.
11 Obviously we disagree with that.

12 During the prosecution of the patent the
13 examiner did raise an issue because it was originally in
14 a claim, it just said means for controlling -- means for
15 locking the barrel and the barrel slide. He rejected
16 the claim as being indefinite. They made an amendment
17 to say it was the control means, and the examiner
18 accepted that and, you know, the case went on to be
19 allowed eventually. It didn't raise a further objection
20 to indefiniteness.

21 Now, again, it's one of these things where if
22 somebody you ask to look at this is somebody of ordinary
23 skill in the art, looking at the figures, reading the
24 specification, and they would understand how that
25 disassembly lever shaft, how the means, how the control

1 means controls the action of the barrel and locks the
2 barrel and the barrel slide. So therefore it's not
3 indefinite.

4 And if we look at -- I just put up a slide
5 here. Let me see. Make sure it's the right one I want
6 to show you.

7 THE COURT: That's the second bridge which is
8 part of the multifunction metal part.

9 MR. HENNEBERGER: Right. So, when I was
10 looking -- when we were looking at the exploded views,
11 that was the blue.

12 THE COURT: Right.

13 MR. HENNEBERGER: All right? So here it's
14 orange in this particular cross-section. And you see
15 the barrel is in yellow and the barrel slide is in pink.
16 And these control attachments on the barrel, number
17 four, they have two attachments which point downward,
18 and one, the rear one rests on top of the second bridge
19 here, the control means. And what the control means is
20 doing here is it's holding up that rear barrel control
21 attachment. And then you'll see up here where I've
22 circled here, this shows where the barrel has a step and
23 the slide has a hole. So this control means or bridge
24 holds up the rear of the barrel which holds this step in
25 the hole of the barrel slide and therefore it's locked

1 and ready to be fired. Once the pistol is fired, the
2 barrel slide moves backwards. The barrel tilts and
3 moves backwards. And then you'll see that gap between
4 the two control attachments will move downward and into
5 -- and will be stopped from further movement by the
6 bridge.

7 THE COURT: Now --

8 MR. HENNEBERGER: So that's the control
9 function. It controls the movement of the barrel.

10 THE COURT: Show that on there for me. I'm
11 not quite --

12 MR. HENNEBERGER: Okay.

13 THE COURT: So the bridge is holding up the --

14 MR. HENNEBERGER: So right. Where I put the
15 pencil here, right, that's the bridge. And then it's
16 holding up this rear control attachment on the barrel
17 where I just put the dot. And then where we have
18 circled the barrel is locked, you see there's a step on
19 the barrel, top of the barrel, and it fits in a hole in
20 the barrel slide. So it's locked in position there.
21 So, because the barrel is being held up, it's being
22 locked in that position.

23 Now when you fire the pistol, the barrel moves
24 down and backwards. And then what happens is this
25 control means ends up going into that space between the

1 two barrel attachments, the control attachments, and
2 you'll see it's shaped to the same shape. So what that
3 does is it controls the movement of the barrel. So
4 initially it's up in the locked position, the pistol is
5 fired, the barrel and the barrel slide both move
6 backwards, and what happens is that barrel tilts
7 downward and backwards and that allows the cartridge to
8 be ejected through the hole in the barrel slide, and
9 that hole creates that step where the barrel is locked
10 in that hole.

11 I know it's kind of hard to see here and it's
12 difficult to explain, but somebody of ordinary skill in
13 the art who is familiar with pistol designs and familiar
14 with this kind of thing, you know, the specification
15 talks about it, if the pistol is provided with a tilt, a
16 barrel that tilts, you know, then you use the control
17 means. So, somebody of ordinary skill in the art
18 reading the specification looking at the figures would
19 clearly understand that that's what's being discussed
20 and being claimed.

21 And unfortunately you and I are not
22 necessarily persons of ordinary skill in the art. The
23 examiner was, you know, and other folks who have
24 experience in design and engineering these types of
25 products.

1 I have to clear this. All right, so, I have
2 another slide here. This is just a top view of the
3 multifunction metal part which includes the control
4 means. So, we have said it's a bridge which spans the
5 sides of the multifunction metal part equivalents
6 thereof. And in the claim, that's another thing, the
7 claim says the multifunction metal part includes control
8 means. Now, the term includes as an open-ended
9 transitional phrase kind of like comprises. So, it
10 doesn't say that it has to be part of it or formed on it
11 or anything like that. It just says that the
12 multifunction metal part includes the control means.

13 So I think that's, again, where we disagree.
14 They seem to think that it has to be integral with the
15 multifunction metal part, and I don't think that's
16 necessarily true. The claim doesn't say that. And
17 that's -- I think that's where we disagree. I think
18 they also say it's a bridge, so.

19 And then the next thing we have here is they
20 start, Sig Sauer has raised the issue of prosecution
21 history estoppel and I guess disclaimer. Any disclaimer
22 has to be clear and unmistakable.

23 During the prosecution Steyr only added claims
24 that were already existing in the original filing back,
25 you know, into the claim one. So there's different

1 kinds of claims. There's an independent claim and then
2 there were dependent claims.

3 And what Steyr did, there was one independent,
4 three dependent claims, and in the end the allowable
5 claim was the combination of one, two, three and four,
6 and they really didn't, there were no specific arguments
7 saying anything, you know, there was an interview with
8 the examiner, there's an examiner interview summary
9 which basically summarized the fact that they chatted
10 about the prior art. I guess there was a suggestion to
11 add claims two and three into the claim and maybe it
12 would be allowable then, so that's what they did. They
13 amended claim four to add that control, the word control
14 so that it was no longer indefinite as far as the
15 examiner was concerned. So, there was no clear and
16 unmistakable disclaimer anywhere in the prosecution
17 history.

18 Sig Sauer raised as an issue with a German
19 opposition proceeding which was done subsequent to the
20 U.S. patent issuing, they made a statement that we
21 didn't bring the, this Kel-Tec prior art to the
22 attention of the patent office, but we couldn't have
23 because the patent had already issued. There's no
24 mechanism at that point to bring something to the
25 attention to the patent office. And the German

1 opposition proceeding at a European opposition were both
2 resolved in favor of Steyr and the claims were held to
3 be valid and enforceable, so, and the claims in the U.S.
4 case are similar but different.

5 That's also extrinsic evidence, foreign
6 prosecution. The Federal Circuit is not very enthralled
7 with using that to limit the scope unless there's some
8 really specific fact pattern where things were said or
9 done, that the cases are few and far between where they
10 use foreign prosecution to limit the scope of a U.S.
11 case. And in this case there was nothing said or done
12 in the foreign prosecution that we feel would be a
13 disclaimer or something like that.

14 Now, Sig Sauer refers to this Kel-Tec P11, and
15 I'm going to just run through why, you know, the
16 arguments that were made and why this Kel-Tec was not
17 held to be invalidating prior art, at least in the
18 German opposition proceeding and the European
19 proceedings.

20 So, we have colored here three pins. Now
21 those three pins are the pins that hold the metal frame
22 into the plastic housing. I'm going to have to draw
23 some stuff here. All right, so, they have a disassembly
24 lever shaft or an assembly pin which is this 110, the
25 pink, which is right here. That only goes through a

1 hole in the metal frame or metal chassis. It does not
2 go through -- it sits on top of the plastic housing.
3 You see there's two cutouts at the top of the plastic
4 housing. That fits in one of those two cutouts. So
5 there's no, that particular assembly pin doesn't go
6 through both the chassis and the plastic housing. And
7 that's one of the things that was being argued in
8 Germany, was that -- let me say one other thing. So
9 their assembly pin is a dual function pin like ours,
10 except their second function is not to mount it into the
11 -- not to mount the frame into the housing. It's to be
12 the control means. So, once this is assembled, then
13 that provides the control means for the barrel. And
14 what they were saying in the German opposition
15 proceeding was that this is not included on the
16 multifunction metal part when that complete unit is put
17 into the plastic housing. And that also doesn't serve
18 the function of holding the metal frame, the completed
19 unit, into the plastic housing. They actually have to
20 have separate pins.

21 So, I think Sig Sauer is misunderstanding what
22 the German attorney was saying. He was saying, well,
23 you know, it can't be, the assembly pin which assembles
24 the barrel and the barrel slide on to the pistol, it
25 can't be, it's not part of the multifunction metal part

1 when it's inserted as the complete unit. It's only put
2 in afterwards. So therefore it's not included on the
3 multifunction metal part.

4 Now the other thing that this doesn't have
5 that the patent discloses is the projection and the
6 recess. If you look here, there is some sort of, you
7 know, there's some sort of projection on the back of the
8 chassis or frame, but it fits in a hole in the back of
9 the plastic housing. As a matter of fact, that has no,
10 it doesn't help to hold the -- it doesn't create a
11 second point of connection between the multifunction
12 metal part and the plastic housing. As a matter of
13 fact, they need to use a pin which goes through to
14 create a point of connection between the frame and the
15 plastic housing.

16 So there's two things there. So there's no
17 recess with projection and the control means is not
18 included on the multifunction metal part as part of the
19 unit that gets inserted into the plastic housing. So
20 that's what they were saying.

21 And I think I'm pretty much done unless you
22 have some questions for me.

23 THE COURT: All right. That's fine. Thank
24 you.

25 MR. HENNEBERGER: All right, thank you, your

1 Honor.

2 THE COURT: Mr. Kavair.

3 MS. CARROLL: My colleague -- Laura Carroll

4 for Sig Sauer, and this is my colleague Eric Kaviar.

5 He's going to do the presentation. I also just want to

6 take a moment that we've got two representations of Sig

7 Sauer here in the courtroom avidly watching this as

8 well. Thank you.

9 MR. KAVIAR: Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. KAVIAR: May I proceed?

12 THE COURT: Yes.

13 MR. KAVIAR: As my colleague mentioned, I'm

14 Eric Kaviar.

15 So today I'm going to go over a few different

16 things. I'm going to start with an overview of the

17 asserted patent. As you might not be surprised, I have

18 a slightly different view from my brother as to sort of

19 the scope of this patent and what the purpose was.

20 We're going to then take a look at the actual claim

21 language itself which defines the invention. Then I

22 want to spend the most of the time today, your Honor, if

23 you'll allow it, addressing the potentially dispositive

24 claim construction terms. There are a couple terms that

25 are construed in our view correctly, will end this case.

1 The remaining terms are, as you could probably tell from
2 my brother's presentation, things that they want
3 construed in a certain way to avoid invalidity of what
4 is a pretty powerful reference.

5 So starting with the patent, we're going to
6 call it the '301 patent as my brother did. As you know,
7 it's directed to a pistol that has a plastic housing.
8 It was filed in 1999.

9 Now, according to the patent the problem to be
10 solved was that metal pistols are strong but they're
11 very heavy, so it was desirable to make them lighter.
12 Now, how do you do that. Well, plastic, and there's all
13 sorts of types of plastic, can help you save weight, and
14 you can actually make a whole lot of components out of
15 it, but a gun has a small explosion that occurs every
16 time it's fired and that exerts very high forces, and
17 that resulting energy is not easily controlled by most
18 plastics.

19 The solution here as identified by the patent
20 itself is that you're going to use a single metal frame
21 called the metal multifunction part or MMP --
22 multifunction metal part I should say. The MMP fits
23 into the plastic housing to serve as rails for the
24 barrel as well as a frame for the trigger assembly.

25 Now, at the time of the invention this wasn't

1 a new concept. There were metal prior art frame
2 assemblies that addressed the problem. In this patent
3 itself, they expressly call out the Glock. And they say
4 that the problem with the Glock is that there are all
5 these individually coated parts, they have to be
6 separately put in, and it's difficult to assemble,
7 difficult to disassemble. As you can see from this
8 image, your Honor, these are some of the components.
9 It's kind of separate distinct items that make it
10 difficult to sort of disassemble, reassemble,
11 manufacture.

12 Also in the prior art at this time is the
13 Kel-Tec pistol. My brother introduced it. The Kel-Tec
14 pistol we think is very close to the actual patent. The
15 main difference, as you can see here, if I can get my
16 pointer to display, but in any event, the main
17 difference here is that the MMP here has a bridge and
18 the bridge is a separate component. That's really the
19 only meaningful difference. All this other stuff is I
20 think a very extraneous argument and was extraneous to
21 the German patent office as well.

22 Now, we do say Steyr did not disclose the
23 Kel-Tec P11 to the U.S. Patent Office. Now granted, the
24 first time the P11 got put before a government body was
25 in Germany after this patent issued. But we believe, on

1 information and belief, Steyr's is a sophisticated
2 entity, it closely monitors its competitors, this was a
3 popular novel gun, there were articles on it in all
4 sorts of gun magazines, it created quite a bit of press
5 when it came out, on information and belief we think
6 they probably knew about this patent while the '301
7 patent was pending, and we would get to that should the
8 case move forward in that direction.

9 So then looking at all the different prior
10 art, what's the distinction between the claimed
11 invention and the stuff that came before it.

12 According to the patent itself it's this
13 concept of a single metal multifunction part. And here
14 they're using the term single as a reference to a single
15 piece, one piece. You compare that to the prior art on
16 the fact of the patent. It's constantly referencing
17 that there are multiple parts, they're difficult to fit
18 in because there are multiple individual parts. It's
19 talking about a frame assembly rather than just a single
20 metal part.

21 And again, what's the purpose of the
22 multifunction metal part? Well, there's a variety of
23 purposes, but one of them according to the patent, is to
24 include control means for locking the barrel slide.

25 So, my brother seems to suggest that include

1 somehow is open-ended enough to suggest that it doesn't
2 need to be attached or, I think that fails as a matter
3 of grammar in claim construction. I think when you're
4 making a statement that a frame includes this component,
5 you're stating that that's a part of the frame, that's
6 the part of the single piece of metal. So that's our
7 position and we'll get to that in more detail.

8 In case it's helpful to the Court, we've
9 annotated some figures from the patent. Here we're
10 calling out the MMP. It's called out in yellow. And in
11 particular this control means on quote, unquote, that
12 they're claiming is highlighted or I should say
13 annotated by the red dash. That's an internal part that
14 will be connecting one side of the MMP to another side
15 of the MMP.

16 THE COURT: That's the bridge, is that what's
17 referred to as bridge number two?

18 MR. KAVIAR: Correct, your Honor. 33 is the
19 control means -- I'm sorry, your Honor, yes, it is also
20 referred to the second bridge. I'm sorry. And this is
21 also seen in figure six and five. Again, we've
22 annotated these to show it's again being depicted as
23 always as a single one-piece frame and the MMP is a part
24 of that frame.

25 So, if you will indulge us we just have a

1 quick animation to show how this works. Even us, as
2 patent attorneys, when we first saw the patent we were
3 trying to figure out how things moved. So this
4 animation will give you --

5 THE COURT: You think you're trying to figure
6 it out.

7 MR. KAVIAR: Well, we hope this helps. So
8 this is a figure, we've sort of streamlined it. This
9 isn't all in the patent, but this is how it would
10 operate.

11 You have a bullet. You pull the trigger. It
12 ignites the powder. Bullet flies out. This exerts a
13 lot of pressure. The barrel and the barrel slide come
14 back together. I just want to pause it right here.

15 So, what's happened. All right. Bullet's
16 been fired. Both the barrel and the barrel slide
17 because of the pressure of the bullet coming out of the
18 barrel at a very high velocity, are moving backwards.
19 Now, the barrel itself contains, they call them control
20 attachments, it's basically these two little prongs,
21 right. And then in between the prongs there's a groove
22 that is created by the presence of the prongs.

23 So, what happens is as it comes backwards the
24 control attachments catch the MMP, and by catching it,
25 brings it down at a slight angle. Now, as that's

1 happening this prevents the barrel from moving any
2 further back. So the barrel at this point, until it
3 receives another push, will stay in this kind of
4 position where it's got the control attachments pressed
5 against the quote, unquote, control means.

6 The barrel slide keeps independently moving
7 backwards. And I can keep the video going. But the
8 barrel slide is not controlled by the frame itself here.
9 It hits a different portion, it's not controlled by this
10 control means. The slide I should say, barrel slide,
11 independently travels backwards and then comes back and
12 returns and brings forward the barrel to put it back
13 into breech. And this is on a loop, so I'll just show
14 you one more time. You can see it as many times you
15 want, I've included it with the materials, but.

16 And just because we've removed the colors for
17 these kinds of animation firing segments, I'll just go
18 over the colors just so those make sense. I think I
19 have to go forward one.

20 So just to be clear. Yellow represents the
21 MMP. Orange represents the barrel. And the gray
22 represents the -- the dark gray represents the barrel
23 slide. The firing pin is in a light gray and the
24 trigger is in light gray, they're not kind of critical
25 to this discussion.

1 So, that's the patent description of the
2 invention and that's how we envisioned it working in the
3 annotated embodiment.

4 So let's look at Steyr's commercial
5 embodiment. Steyr's commercial embodiment is entirely
6 consistent. The multifunction metal part in Steyr's
7 embodiment is one piece, one single piece of metal, and
8 the quote, unquote, control means is a portion of that
9 larger piece of metal.

10 Now, the claimed invention. As you're aware,
11 the claim came out of prosecution in sort of a haphazard
12 way. It's a very long claim. It's not broken apart
13 particularly well. What we did is we just are
14 annotating it here into different segments, A through I.
15 The portions that we're attempting to construe today and
16 argue our positions to your Honor are the ones called
17 out in red. So we have the multifunction metal part,
18 means for supporting trigger mechanism, the transverse
19 hole limitation, the rear wall limitation, and the
20 control means limitations.

21 So, why do these claims matter? Well, the
22 multifunction metal part and the control means
23 limitations are directly relevant to noninfringement.
24 Our products, as my brother previewed, in our products
25 we don't have a single multifunction metal part, and we

1 certainly don't have control means that's a portion of
2 that metal part. Our product in relevant part operates
3 similar to the P11 and in our view other guns that came
4 before it, and that there's a pin that's serving the
5 function of catching that barrel when it comes back, and
6 that's shown in this picture. And again, like the prior
7 art, the accused products have a multipiece frame.

8 Now, and we'll get to it in a minute in more
9 detail, but I disagree with my brother. I think it's
10 pretty plain Steyr told the German patent office that
11 the control means cannot be a removable pin. It made
12 other arguments, some of which my brother alluded to,
13 but that was a very clear argument that was asserted.
14 And again, another reason why this is important, Steyr
15 also admitted to the U.S. Patent Office that a
16 multipiece frame did not qualify as an MMP. And in a
17 minute I'll get to why that is clear on this.

18 Now, the other claim terms as I presume you
19 can tell from my brother's presentation, those are most
20 relevant invalidity. In particular they're trying to
21 get around the Kel-Tec reference, and before even
22 Kel-Tec came into existence there was the Grenbel P10
23 and P30, which is by the same manufacturer. And
24 regardless, just as an aside, even if Steyr's positions
25 are adopted for those constructions, we think the patent

1 claim one will be at least obvious.

2 So now to the potentially dispositive claim
3 terms.

4 So, Sig Sauer's proposal is that the
5 multifunction metal part should be construed according
6 to all the disclosures and the limitations and
7 statements made during different prosecutions. It
8 should be construed as a one-piece metal frame that
9 serves multiple functions. We'll get to why my
10 brother's proposal has some problems with it in a
11 moment. But you can just see from the image here,
12 Steyr's proposal has a lot of words in it. It's not
13 particularly helpful to a jury to actually understanding
14 the scope of the claim, and that's really why we're
15 here. We're here to resolve, your Honor, I believe
16 under 02 Micro and other cases, we're here to resolve
17 party disputes as to the meaning of the claim, but also
18 to provide the jury with clear guidance as to what the
19 claims mean.

20 So, it's important to note that multifunction
21 metal part doesn't have a plain and ordinary meaning.
22 So it's not as if, as my brother is suggesting, the
23 specification and embodiments and all of this are so
24 irrelevant. If you had a claim term let's say like
25 shaft, shaft has a very clear meaning. If you have a

1 term shaft and you look at specification, you might be
2 able to tell, okay, they're just discussing one example.
3 But when you have a term that has no plain and ordinary
4 meaning, you're actually using the specification to try
5 to figure out what it means, to try to provide
6 definition, and there's lot of principles that we'll go
7 into in a moment that show why that's important and sort
8 of what canons matter when you're kind of cobbling
9 together a meaning for something that ordinarily doesn't
10 happen.

11 And this is just to follow-up, as in Phillips
12 and other cases, the intrinsic evidence then becomes
13 really important.

14 So let's go back. A canon in a claim
15 construction that you look to the purpose of the
16 invention as a sort of one thing to give you a hint as
17 to what something means. So here the purpose of the
18 invention is clearly stated. You're going to replace
19 the prior art metal frame assemblies containing multiple
20 parts with a single metal multifunction part.

21 Then you turn to the next canon. Another
22 canon of claim construction is that if every single
23 embodiment depicts the same exact thing, then that's
24 probably very important to the meaning of that thing,
25 and here that thing is the multifunction metal part.

1 Every single embodiment of the claim of the
2 multifunction metal part is consistently and exclusively
3 described as being a one-piece metal frame. And here's
4 a passage, I can get to it in a moment, but this is one
5 place where we disagree with the Alabama court. Alabama
6 court read this and thought -- let me just read the
7 passage. The multifunction metal part can be produced
8 in various ways, being milled from a solid, as a
9 precision casting, by welding individual parts together,
10 or even as a stamped sheet metal. My understanding is
11 the Alabama court looked at the statement welding
12 individual parts together and said, well, that doesn't
13 mean it's one piece. Respectfully, your Honor, what
14 we're suggesting one piece means, and maybe we can pick
15 another term if that's more precise for the court, but
16 what we're suggesting one piece means is to take it
17 apart requires destructive force. It's not something
18 that's being disassembled and reassembled according to
19 some plan and, you know, precision cuts and things of
20 that nature. It's if you've got to take this thing
21 apart, you've got to break it, and that's where we
22 dispute the Alabama court there.

23 I'd also say in general we disagree with a lot
24 of the constructions from the Alabama court, but they
25 weren't provided, the Alabama court was not provided

1 with all of the intrinsic and extrinsic evidence that
2 you're being provided with, they weren't provided with
3 the German and European file histories as well I
4 believe.

5 So, another principal that we deal with is
6 that there's this written description requirement. Now,
7 the written description requirement is all about has the
8 inventor aptly provided the world with notice of the
9 scope of the claims. And it's really like a notice
10 description of the invention type requirement.

11 Now, if you find that this metal --
12 multifunction metal part can be a combination of
13 removable parts, that would actually expand the claims
14 beyond anything that's ever been described as a
15 multifunction metal part in the patent itself. So, as a
16 matter of Federal Circuit law that's a no no.

17 THE COURT: I thought Mr. Henneberger agreed
18 that the MMP was a single piece.

19 MR. KAVIAR: I was confused as to that point,
20 your Honor. I believe he was being very precise in some
21 answers and saying that certain embodiments disclosed in
22 a certain way. I would be very happy to hear that he's
23 agreeing that the multifunction metal part is a single
24 piece and it includes the control means.

25 THE COURT: And then you attach these other

1 pieces to it and put it in. But the part itself is a
2 single piece.

3 MR. KAVIAR: Correct. And some of the pieces
4 are attached after it's put in. But yeah, those aren't
5 part of the multifunction metal part. I don't believe
6 my brother went as far as that, but I won't speak for
7 him.

8 THE COURT: Well, he can speak again later.

9 MR. KAVIAR: Okay. Well, I hope you ask him
10 that question.

11 THE COURT: In case I misunderstood him. But
12 that's the way I -- I asked several questions about it
13 to try to zero in on that.

14 MR. KAVIAR: I hope he answers that they agree
15 with our construction.

16 And again, another important canon of claim
17 construction is you've got to think about what's being
18 described as the invention. The invention is sort of
19 magic language. That's acute to a person reading the
20 patent, how do I figure out the bounds of this thing.
21 If it says not an example but the invention is blank,
22 then that's critical and important to sort of
23 understanding the scope of the term. And here, again,
24 the invention is a single metal multifunction part.

25 And the patent also says that the invention is

1 explained with reference to the figures, which may be
2 interpreted as saying that the figures are limiting
3 because they are being described as the invention.

4 THE COURT: Do you agree that the '301 patent
5 discloses a single embodiment of the invention?

6 MR. KAVIAR: I would say that, I would say
7 there are multiple embodiments based on the fact that
8 there's a disclosure here that it can be produced in
9 various ways, but each of those ways is consistent with
10 sort of the same concept here. It wasn't clear to me
11 looking at the figures whether that was stamped or cast,
12 but in any event, there are multiple embodiments all
13 done the same exact way into a one-piece frame.

14 And again, I get to that point actually in the
15 next slide. You read my mind, your Honor.

16 So, to go back over the file history.
17 Original claim one required the multifunction metal part
18 as asserted in claim one. But claim four was actually
19 not the same as written. So I disagree with my brother.
20 The only thing -- it wasn't as if they just combined one
21 and four. They actually amended language to make it
22 more narrow before they combined claims one and four.

23 THE COURT: It's not a very well drafted
24 patent.

25 MR. KAVIAR: I would agree, your Honor.

1 THE COURT: I've seen a lot better than this.
2 This is not well done.

3 MR. KAVIAR: I would agree, your Honor, and
4 not to fault anyone but what I would speculate is that
5 this all came off of an Austrian provisional and whoever
6 prosecuting it got a pretty poor translation and didn't
7 force their translator to be a little more clearer.
8 That's what I presume happened.

9 So, when we're in the patent office, the
10 patent examiner says, hey, this '301 looks a whole heck
11 of a lot like Schmitter. It has the same type of frame
12 setup. It's got a barrel that connects into it. And
13 Steyr did something -- so they rejected the claims as
14 anticipated by Schmitter. And the examiner also wanted
15 to know what this means for locking. What portion of
16 the multifunction part is intended to correspond to the
17 claim. And again, I think if you look at the file
18 history it's clear at the time of examination even the
19 means for locking here before control means was added,
20 I'm talking about a portion of the actual MMP is part of
21 that piece.

22 So, these are the elements that the examiner
23 found were invalidating. They pointed to 70 here, the
24 sort of side frames, and then this little connector part
25 as a means for locking 130. It's in the red.

1 Now, as you can see, what's the difference
2 between the '301 patent and Schmitter. Well, the only
3 real difference you can see from that in relevant part
4 is that the '301 patent is one single piece and the
5 control means here is a part of that one single piece,
6 and in Schmitter they are separate components.

7 Now, in response Steyr demanded an interview
8 with the examiner. Now, this is a particularly tricky
9 sort of sophisticated thing to do. What you're doing
10 there, instead of writing out in very clear and
11 exquisite detail what your arguments are so that they
12 can be preserved forever, you're having an interview
13 where you only get these notes that follow the
14 interview. So, in the notes that follow the interview,
15 which are traditionally very short, the notes say that
16 Steyr mentioned as a distinguishing point, Steyr is
17 talking about item 70 and 130 in combination with
18 Schmitter.

19 Now, before I get to why that is actually a
20 disclaimer I just want to get to a couple sort of policy
21 points. The doctrine of prosecution history disclaimer
22 is designed to protect the public and encourage
23 invention. People are encouraged by patent law to
24 design around patents and come up with new and even
25 improved upon patents. And the public is entitled to

1 look back and rely upon inventors' representations about
2 the scope of their invention. And this supports the two
3 policies I just mentioned.

4 So, as we just discussed, the only material
5 difference here between Schmitter and the MMP is that
6 Schmitter's multiple components. And my brother has not
7 put forward another reason why this patent got out of
8 the patent office in view of Schmitter other than the
9 fact that we're talking about a one-piece component, the
10 MMP. And again, there are some images.

11 So, something about ambiguous when it is the
12 only reasonable conclusion that you can draw from the
13 information before you, and I would propose, your Honor,
14 that when you look at the interview summary, the only
15 reasonable conclusion that you can come to is that they
16 got around Schmitter by representing to the patent
17 office that their piece was a single one-piece part.

18 Now, my brother talked a little bit about the
19 standards. For something to be a binding disclaimer, it
20 has to be clear and unmistakable. It doesn't need to go
21 to the heart of patentability. It can be a general
22 statement about the claim of scope. But it has to be
23 clear that they're talking about the scope of the claim.

24 But what happens if something doesn't qualify
25 for a prosecution disclaimer or what if something

1 doesn't qualify as a prosecution estoppel or narrowing
2 amendment under some stuff that we'll get to in a
3 moment, what happens. Well, what happens before the
4 patent office is still pretty darned important, and
5 according to Phillips and a lot of other Federal Circuit
6 cases you still look to it. Maybe you don't say this is
7 the end statement, but even if you don't think it's a
8 clear and unmistakable statement, it's still relied upon
9 to determine the meaning of the term.

10 Now, just to get to Steyr's construction for a
11 moment. As a starting point, it's 64 words long and
12 then it really merely copies or summarizes the other
13 terms in claim one. So, if you adopted this proposal it
14 will confuse a jury. The jury couldn't insert that into
15 the sort of sentence to figure out what it is. A
16 definition is supposed to make things clear. And if you
17 adopt this proposal, your Honor, it also will render
18 basic quality of all of the other terms redundant. It
19 uses almost every single other limitation. And I
20 believe you will ask my brother on rebuttal, but we
21 believe they're still trying to cover a multipiece MMP
22 with a control means that's separable.

23 I'm going to turn to control means unless your
24 Honor has any other questions for me at the moment on
25 MMP.

1 THE COURT: So, your position is essentially
2 the MMP is a single one-piece part made of metal
3 performing more than one function. That once it's been
4 formed or milled or cast, welded or stamped or otherwise
5 constructed cannot be separated into component parts
6 without destroying the integrity.

7 MR. KAVIAR: You have my argument, your Honor.

8 THE COURT: All right.

9 MR. KAVIAR: So now turning to the control
10 means limitation.

11 So, as my brother introduced, this is a
12 means-plus-function limitation. They work a little bit
13 differently. You have to construe two different
14 portions. You have to construe the means that's claimed
15 here, the term control means presumptively gives you the
16 rebuttable presumption as mean-plus-function, but we're
17 in agreement. And when we look at the means, we're
18 supposed to only look at what's expressly disclosed in
19 the specification as the means to perform the function.
20 And we'll get to it in a moment, but there was a very
21 clear identification that happened during prosecution
22 history of what it is, and it's that bridge-like
23 portion, second bridge of the MMP, and it's designed to
24 engage a portion of the barrel.

25 Now the function here, locking said barrel in

1 the barrel slide, we believe that's indefinite. We'll
2 get to it in a moment. I think it's in part due to, as
3 your Honor mentioned, the patent not being particularly
4 clearly drafted, but it's unclear what function's
5 actually being claimed. The function that my brother
6 just mentioned is nowhere described in the
7 specification, never showed up in the prosecution
8 histories. It's just sort of out of figure out and out
9 of their imagination in our view respectfully. Again,
10 we'll get to Steyr's proposal and some issues with it in
11 a moment.

12 So, to rewind in that initial office action,
13 the patent office said to Steyr, can you please confirm
14 what portion of the MMP is this claimed means for
15 locking. And so they responded. They responded by
16 amending the claim. They added the language control.
17 So it's not just the combined claims one and four. They
18 amended to be very specific. And then they represented
19 very precisely that the pistol as claimed in claim one
20 wherein the multifunction metal part includes control
21 means, is actually referring to page seven, lines one
22 and two, of the specification by reference to numerable
23 33. So, they're saying that it's a very specific
24 portion of specification. Page seven, lines one and
25 two. And that's precisely the control means we've been

1 looking at in the images. That's the bridge, the second
2 bridge.

3 So now we've covered these first two issues.

4 The terms of identifying the function, use ordinary
5 principles of claim construction to construe and figure
6 out what the function is.

7 THE COURT: Isn't it locking the barrel into
8 the barrel slide? Is that what --

9 MR. KAVIAR: Yes, I'm sorry. This is the
10 specific language that they identified. This is the
11 portion of the patent that they identified.

12 THE COURT: Isn't that the function?

13 MR. KAVIAR: Correct. But what does that
14 mean, and we'll get to it in a moment.

15 Okay, your Honor, I can turn to that first,
16 but I was just going to get to a few things about what
17 structures are equivalent first to the control means.

18 So, we already know that the control means
19 cannot be removable because it's part of the MMP, right.
20 So we're not starting from scratch and we're trying to
21 figure out what's equivalent to control means. We know
22 it has to be a part of the MMP. And that's supported by
23 interview summary. And again, when you're dealing with
24 this control means term, there's another thing that
25 applies. Here -- and we have a disagreement with my

1 brother, as to whether there was a narrowing amendment
2 under Festo. They believe Festo does not apply.
3 Directing you to this Federal Circuit case that applies
4 Festo means-plus-function claims, they are citing
5 district courts that I don't believe frequently practice
6 patent law and no circuit law on that point I believe.

7 But regardless, here if it's not a narrowing
8 amendment as they spoke about a little while ago, it
9 would still be persuasive evidence, and you look to it
10 to try to figure out the meaning of the term control
11 means.

12 THE COURT: Well the Beretta court didn't
13 credit your theory that the disclaimer language
14 overcame, did it?

15 MR. KAVIAR: No, your Honor, but again, we
16 disagree with a lot of the opinion from the Alabama
17 court and respectfully we don't believe that the Alabama
18 court got the law right and was not provided all of the
19 facts, so we're not surprised it came to that
20 conclusion, but we think that's a function of the
21 briefing in that case, not the, not that it's correct.

22 So under Festo there's a four-part -- but,
23 your Honor, even if that's correct, even if it's correct
24 that there wasn't a quote, unquote, narrowing amendment
25 under the meaning of Festo, you would still look to what

1 happened to figure out what's the meaning of the term.
2 You just wouldn't give it sort of permanent weight. It
3 would just be weighed against all the other
4 considerations.

5 So, if Festo applies, which is our position,
6 we have to only show there's a narrowing amendment, and
7 then estoppel attaches unless they come back and prove a
8 number of different exceptions. It's all in the
9 briefing so I won't get into it in the interest of time.

10 So was there a narrowing amendment. They went
11 from means as a general principle to control means as
12 specifically described in two sentences in the patent.
13 We think that is *per se* narrowing. The examiner
14 confirmed that the patent would only issue if Steyr
15 further combined original claims one and four. By
16 combining four to one, it drastically narrowed the scope
17 of claim one. And Steyr obtained the patent containing
18 only one claim subject to these changes.

19 And again, you know, in just thinking about
20 not from the perspective of the MMP but from the
21 perspective of the control means term, what's the
22 difference between control means in Schmitter and the
23 that control means described in the '301 patent. The
24 only difference is that it's a separable component. And
25 that's the only conclusion you can draw. And they have

1 not offered a competing explanation to my knowledge
2 though my brother can correct me on rebuttal.

3 So Steyr surrendered at least separable
4 control means. Because if you want to figure out the
5 scope of the narrowing amendment, you disclaim quite a
6 lot when you make a narrowing amendment under Festo.
7 But trying to figure that out can complicate it. Here
8 we know what it at least includes. It at least
9 concludes stuff like the things in Schmitter, separable
10 components, separable control means.

11 Now, basically around the same time that they
12 filed the U.S. application off of the Austrian
13 provisional, they also filed a German patent
14 application. And it matured into a German patent. We
15 obtained an English translation of that patent, and I
16 think it was the first time that any court has seen that
17 translation. It was not before the Alabama court.

18 The '301 patent and the German patent are very
19 close in almost every way. They contain the exact same
20 figures, substantially the same specification, and the
21 claims were substantially the same at certain points.
22 There were some amendments and things of that, but
23 they're substantially the same claims. They're talking
24 about same exact concepts.

25 So German patent claim three includes the

1 following: A handgun according to claim one with a
2 barrel which is lockable in the slide, characterized in
3 that the locking control means are formed on the
4 multifunction metal part.

5 Now there's two interesting things going on
6 here, your Honor. First it's using the same term,
7 control means, in Germany. So we're talking about the
8 same thing. This isn't sort of like a legal argument or
9 some legal part of the analysis. The case law -- and my
10 brother said that there wasn't a lot of it, there is a
11 lot of it. When you make a binding statement, when you
12 make a statement in a foreign court about a related
13 patent that's factual in nature as to the scope of a
14 related invention, it's an admission. And we're talking
15 here about the control means and what's in the control
16 means. Now, another thing that's interesting, it's
17 actually probably more clear from the German patent's
18 translation of this claim than it is from our patent,
19 that here they're talking about the control means as
20 this thing that locks the barrel in the slide, and it
21 seems to suggest that it's from the firing position
22 better in my view, but that's sort of an aside.

23 So, again, in the German patent the reference
24 to the control means is the, it's the same language,
25 it's the second bridge, and it represents a control

1 means for locking the barrel, and it references the same
2 pictures as the '301 patent. And here's the '301 patent
3 language. As you can see it's virtually identical.

4 Now during an opposition proceeding, a Sig
5 Sauer foreign affiliate contended that that claim three
6 with the control means limitation was invalid in view of
7 this very interesting Kel-Tec reference we've all been
8 discussing today. Now, as noted in Kel-Tec, like
9 Schmitter, what's the main difference between the sort
10 of control means in Schmitter and the control means in
11 Kel-Tec and the control means in the '301 patent. The
12 prior art have a separable component that serves as the
13 control means. Here it's 110. It's called out in red.
14 It's this pin right here.

15 So, in response to the argument that claim
16 three was invalid in view of Kel-Tec, Steyr responded
17 with a factual representation that the removal of the
18 pin in the Kel-Tec P11 is not a control means even
19 though it's being used to control the locking barrel
20 during the movement of the slide. And it further
21 represented, again, this is factual, it's not a legal
22 argument, that it is not a control means because it is a
23 the permanent part of the multifunction metal part.
24 Rather, it is similar to a disassembly lever shaft. And
25 again, that's a very specific type of shaft, we'll get

1 to it in a moment, but they're making the argument that
2 the Kel-Tec P11 doesn't really have a control means as
3 claimed because it's not a permanent part. And the full
4 translation, everything is available at these cites, and
5 it's also on the right side of the slide.

6 So under the law, I just noted one, Gillette,
7 there's a bunch more in our brief and there's a bunch
8 more out there in terms of Federal Circuit law, these
9 are factual statements that operate as an admission that
10 the claim control means cannot be a removable pin like
11 the one contained in the Kel-Tec P11. And it only makes
12 sense. If you're representing to one foreign government
13 body that you're entitled to a -- and there are
14 treatises that apply to patent law as well. So I want
15 to make sense. If you're representing to a foreign
16 government that a control means factually did not
17 include X, that should travel with you to other
18 government bodies. Including the U.S.

19 Now, the problems that we have with Steyr's
20 construction is, as a starting point, it leaves claim
21 construction of equivalents to the jury. Now, I think
22 the argument here needs to be broken down into steps
23 because there's more going on than just you either let
24 the jury construe equivalents -- or excuse me, you
25 either let the jury determine what is an equivalent or

1 you don't. So, as a starting point, and it's referenced
2 in every Penny, we have this case O2 Micro from the
3 Federal Circuit, it was a pretty big deal when it came
4 out, and in O2 Micro what the court said is this whole
5 claim construction process is about resolving the
6 disputes between the parties. And the court, the role
7 of the court is to resolve those disputes. And it needs
8 to resolve those disputes even if you're going to the
9 jury the day before, even, even if you're in the middle
10 of the trial, whenever they occur, because that's the
11 purpose of sort of the exercise of patent infringement
12 cases, that that's the kind of key critical role.

13 Now, also O2 Micro, this is a bit of an aside,
14 but also in O2 Micro you don't even need to assign a
15 construction. A dispute might be as simple as something
16 like this is a means-plus-function claim or this isn't,
17 and even if the parties propose language, the court says
18 plain and ordinary meaning applies, it doesn't mean it
19 does, either it says I don't think it's a
20 means-plus-function of plain and ordinary meaning. So
21 the role isn't to actually necessarily provide words,
22 but it's to resolve the dispute. And most of the time
23 resolving the dispute includes providing words. And
24 they don't have to be word-for-word from either party
25 obviously, and they're supposed to resolve the dispute.

1 So here, even though at some point there could
2 be an equivalent argument that could be appropriate for
3 the jury, what we're saying is that everything that
4 happened in Germany and in the U.S. is a part of this
5 patent, and it's a part of the meaning of control means,
6 and so necessarily you can't recapture through
7 equivalents all of the stuff that you disclaimed to get
8 the patent. So, what we're saying is that granted the
9 jury might be able to decide some equivalencies, they
10 can't decide the legal issue of whether the claimed
11 control means is a separable component. That's a
12 question for the judge. I think that's very clear on
13 the law. And the main problem with Steyr's proposal,
14 even setting aside the number of words, is that it
15 actually doesn't directly address the dispute as to
16 whether a removable pin can constitute a control means.
17 And so, your Honor, if that was a question you're
18 inclined to ask my brother during rebuttal, we would
19 greatly appreciate it because we believe there's a
20 dispute there in that their construction doesn't address
21 it but they're trying to claim those removable pins. We
22 also think that Steyr's construction ignores the file
23 history and the admissions from the related patent.
24 They keep saying they're not binding and they keep
25 saying, you know, maybe they continue get binding

1 weight. Even given that as an assumption, we believe
2 obviously we do get binding weight. But even if you
3 give them their argument, they're still entitled to
4 weight, they're still entitled to be considered, and
5 they only lead to the conclusion that the control means
6 is one piece.

7 Getting to locking the barrel in the barrel
8 slide. So, the '301 patent references a control means
9 for locking the barrel in the specification, but it
10 doesn't explain how the control means can be used to
11 lock the barrel in the barrel slide. The bridge that's
12 disclosed as the claimed control means is designed to
13 engage with the control attachments on the bottom of the
14 barrel's block after the gun is fired. And this is an
15 image here of the video. It's an annotation. But this
16 is what it would look like if the gun was fired and the
17 control means is serving its job. The control means is
18 preventing that barrel from moving further. We're not
19 giving them that that's a locked position, but if you
20 presume that that's locking, you know, that's the only
21 thing that can be considered locking in the patent.

22 So the bridge could possibly, it might be
23 considered to lock the barrel to the MMP. So the bridge
24 might lock the barrel to the frame, but it doesn't lock
25 the barrel in the barrel slide. The slide as we saw,

1 and your Honor, if it would help I can go back to the
2 video, but the barrel slide keeps moving independent of
3 the barrel once it's fired, independent of the control
4 means. And the barrel continues to travel backwards and
5 it's independent of the barrel slide. Its movement is
6 not constricted by control means. You cannot have a
7 control means directed to something that is not
8 controlling the movement of the other object. It
9 logically doesn't make sense, and as a matter of patent
10 law doesn't make sense. So, to us, the term locking
11 said barrel in the barrel slide is indefinite because
12 it's unclear what it actually means and what it
13 requires. It's certainly not talking about the only
14 disclosed locking possibly that's going on in the
15 patent. And I wasn't entirely clear with my brother's
16 argument, so I made a hidden slide. I just need to pull
17 it up. I thought he might be suggesting this. I just
18 want to get to it.

19 THE COURT: What we'll do is just take a
20 ten-minute break for the sake of our court reporter.

21 MR. KAVIAR: Of course, your Honor.

22 (Recess taken.)

23 MR. KAVIAR: Your Honor, may I continue?

24 THE COURT: Yes. You must be about done I
25 guess time wise.

1 MR. KAVIAR: Yes. I was informed that I might
2 have another minute or so. That's all I will need if
3 that's okay, your Honor.

4 THE COURT: Much of what you said seems to be
5 addressing the issue of equivalents and infringement,
6 and the Court isn't going to decide equivalents at this
7 stage or infringement.

8 MR. KAVIAR: Respectfully I think we might be
9 on separate pages with respect to that point. There are
10 events that happened during the prosecution that give
11 light to the meaning of a claim term. There are things
12 in the specification that give light to the meaning of a
13 claim term. Under O2 Micro and its subsequent cases,
14 that's all highly relevant to resolving a dispute
15 between the parties under Phillips. It's highly
16 relevant. You use that to determine the meaning of the
17 term. Now it's very clear, and we can even do
18 supplemental briefing on this, you can't use
19 equivalents, whether it's means-plus-function
20 equivalents or, you know, equivalents under literal
21 infringement, you can't use the concept of equivalents
22 to recapture stuff that you've disclaimed. So our
23 position is if you've disclaimed it or even if you
24 persuasively said that and that's something that isn't
25 given the disclaimer level weight but still is entitled

1 to weight, you can't go back and recapture it. So
2 that's what we're saying, your Honor. We would agree
3 that there are many questions of equivalence that we
4 would not ask the Court to address. And with respect to
5 infringement, we're not asking the Court to address
6 infringement. It just so happens to be that our product
7 operates quite similarly in relevant part to the
8 Kel-Tec, which is why we brought it up.

9 With respect to just the last point I'll make
10 about control means and with respect to the other
11 claims, we're just going to rest on the briefs. There
12 are some slides in here that you're welcome to look at
13 that address the other terms, but we believe what we've
14 argued in the briefs.

15 My brother's argument is that locking the
16 barrel in the barrel slide means that this piece and
17 this piece are working together to keep that barrel
18 sitting in that position when the gun is in the state
19 called breech. There's a big problem with that theory.
20 When the patent office asked Steyr to define the means
21 at issue very specifically, they only pointed to one
22 thing. They pointed to this thing. So control means by
23 their own words is only that component and not others.

24 Now, if you look at this, we actually
25 highlighted all the parts that are the system that keeps

1 this barrel in this position in breech, so it's not just
2 this acting as a little ledge. In fact, that's pretty
3 inconsequential. And if you remove that ledge, it's
4 still going to stay in that position. If you're talking
5 about keeping that still in that position, you've got
6 barrel slide on both sides with the divot. You've got
7 this interface here and this interface here. So all of
8 that's working together. So the claim control means,
9 you can't cover all of that. And if this item here is
10 not independently sufficient to exert the control, it's
11 not the control means for keeping it in that position.
12 It at most is a shelf in the control system or, I don't
13 know how you'd explain it, but that's an important
14 point. And your Honor, this argument --

15 THE COURT: Well, surely it's not a useless
16 part.

17 MR. KAVIAR: No, it's not, but it's not
18 independently sufficient to keep that barrel in that
19 position. It's working with many other parts. And they
20 told the patent office the control means was only this
21 part and no other parts.

22 And also, your Honor, this idea of the gun in
23 this position being locked, it's not described anywhere
24 in the patent. They're creating that argument at best
25 they can do with figure one, but there's no description

1 of that sort of configuration as being locked. There's
2 no example of why that's locking. They're just strictly
3 relying on this figure. My brother can correct me if
4 I'm wrong, but I'm aware of no other passage that
5 supports that this is the claims locking.

6 Thank you for indulging me with a couple of
7 minutes. We rest on the briefs with respect to the
8 remainder.

9 THE COURT: Thank you. Mr. Henneberger.

10 MR. HENNEBERGER: Your Honor, so I'm going to
11 take some of these things out of order maybe but first
12 thing I want to talk about is this Festo case. My firm
13 was counsel for Festo in that case. That case was, I
14 was involved in that case more than 15 years. That case
15 has nothing to do with literal equivalents under the
16 statute of a means-plus-function claim. Irrespective of
17 that there's nothing in the prosecution history where we
18 made a clear disavowal of any claim scope. That the
19 examiner raised an issue with what the means was, they
20 looked back, you look in the specification, if you look
21 at column two it says in the case of a pistol having a
22 barrel which can be locked in the barrel slide, the
23 invention achieves a further simplification in that the
24 control means for locking are formed on the
25 multifunction metal part. So there's a passage there

1 that also discusses this locked in the barrel slide.
2 There was, I think there's some other -- there's another
3 place, there's something with a tilting -- it escapes me
4 right now. But, you know, and they seem not to have any
5 problem understanding the control means when it comes to
6 the Kel-Tec pistol or any other pistol. And you read
7 the specification as one of ordinary skill in the art.
8 So, a person of ordinary skill in the art is not going
9 to be you or me. It's going to be somebody who's
10 familiar with these types of weapons, has background in
11 it, is maybe an engineer, has designed these sorts of
12 things, so they would understand what that is.

13 And the examiner is also a person of ordinary
14 skill in the art because he deals with these things on a
15 regular basis. Examiners are assigned to particular art
16 units and they deal with a particular group of patents.
17 So the examiner who dealt with this pistol is in the
18 firearms group and would be looking at all sorts of
19 patents related to that. So, he didn't seem to have an
20 issue with indefiniteness. He allowed the case. I
21 think it's clear and understandable to those of ordinary
22 skill in the art and that's how we're supposed to look
23 at the claims.

24 This other thing, the foreign prosecution. So
25 here is the paragraph at issue. And what Sig Sauer is

1 saying is that this sentence here, it says the
2 petitioner however neglects with regard to the assembly
3 pin 110, it is precisely the disassembly lever shaft
4 according to the invention which is not part of the
5 multifunction part but merely serves to assemble it that
6 is concerned. So, what they're saying if I can go back
7 to -- what that sentence is saying is that in Kel-Tec
8 this pink assembly pin, it corresponds to the
9 disassembly lever shaft in the '301 patent. So that's
10 the thing that assembles the barrel and barrel slide on
11 to the frame. It doesn't hold the chassis on to the
12 plastic housing. In order to do that Kel-Tec needs
13 these three pins. So it's not a simple connection
14 between the multifunction metal part and the plastic
15 housing which is the invention.

16 Now Sig Sauer also -- and that pin gets
17 inserted after everything, after the multifunction metal
18 part is assembled into a unit and then inserted into the
19 housing. Then these three pins go in. And then when
20 you assemble the barrel and the barrel slide on, that's
21 only when the disassembly lever shaft or this assembly
22 pin goes in, and that's what that passage was about.
23 They're saying, well, that pin, that assembly pin
24 relates to the disassembly lever shaft. And if you look
25 at our patent, the disassembly lever shaft is not part

1 of the multifunction metal part. That's what the
2 passage says. I don't understand how they can --
3 they're contorting it to something that it's not, that
4 somehow says that we say that it can't be a removable
5 pin. That's not what the sentence says.

6 So, even if -- and again, it is extrinsic
7 evidence. The laws are different. The claim was
8 different. And I'm pretty sure that the cases that
9 we've cited on that are on point and it is what it is.
10 But, so even if it is considered, I don't think it says
11 what Sig Sauer thinks that it says or is asserting what
12 it says.

13 And if we can go back to -- so if we look at,
14 this is the P320 of the accused products. This blue pin
15 or control means is provided on to, is put into the
16 multifunction metal part before it's inserted into the
17 housing. So they're trying to get a narrow claim
18 interpretation that says, well, the multifunction metal
19 part has to be a one-piece thing, and by us making this
20 a removable pin therefore we get out of infringement.
21 If your Honor decides that the multifunction metal part
22 is a one-piece as opposed to what I'm saying is single,
23 not necessarily a bunch of smaller component parts,
24 that's still a question of, under the statute, of
25 whether it's a literal equivalent to an integral -- to

1 an integral multifunction metal part, a one-piece
2 multifunction metal part. It's not disclaimed, you
3 know, that would be an issue that if construe it in such
4 a way, we still believe that's still an infringement
5 because it is a literal equivalent under the statute.
6 Not a doctrine of equivalence, Festo equivalent, but a
7 literal equivalent pursuant to the statute.

8 I'm trying to think of what else I wanted to
9 -- were there any other issues that your Honor would
10 like me to address?

11 THE COURT: No, that's fine, thank you.

12 MR. HENNEBERGER: Okay, I don't think I have
13 anything else.

14 MR. KAVIAR: Your Honor, may I proceed?

15 THE COURT: Yes.

16 MR. KAVIAR: To start in no particular order,
17 my brother keeps suggesting that the Court is not
18 empowered to construe the claims and rather a person of
19 skill, some expert should be coming in providing
20 evidence. Two problems with that. That violates
21 Phillips and a long line of Federal Circuit law. The
22 Court is empowered to construe the claims and assign
23 meaning in view of the specification, file history, et
24 cetera. If the parties believe that extrinsic evidence
25 in the form of expert testimony is relevant to this

1 process, they are empowered to bring it forward should
2 they want to. They have not. So every time my brother
3 references the need or we shouldn't look at this because
4 we need an expert to do it, not the Court, all of that
5 is irrelevant because they didn't bring that testimony
6 forward. And piggybacking on that point, they keep
7 pretending as if the examination process was perfect and
8 was done by a person of skill that's known. They have
9 introduced no evidence to suggest the examiner was a
10 person of skill. We're well aware that the patent
11 office has been a flood system for a long period of time
12 and junk patents get issued and there are problems. We
13 have the post patent review proceedings because of it,
14 we have tons of law review articles on the issue of the
15 problems with the patent system, and as you'll note,
16 this patent wasn't subject to a real strenuous look. It
17 had an interview summary, a couple office actions. I
18 would argue, your Honor, that just because it issued
19 from the patent office doesn't mean that these things
20 all make sense. And in fact, that argument is also
21 logical because we have the ability to challenge in
22 court whether something is valid, whether something is
23 indefinite, all of these things because it's an
24 imperfect system. So, I would not give weight to this
25 notion that the examiner understood everything perfectly

1 and it came out perfect because of it.

2 The next thing is, you know, in looking in the
3 foreign file history, we've given it to you, the Court's
4 entitled to look at it and make up its own mind. My
5 brother I believe is misunderstanding what happened
6 because he keeps conflating all of the arguments. And
7 he's also not acknowledging a very clear statement.

8 What we're saying is that Steyr told the German patent
9 office that the assembly pin is not a part of the
10 multifunction metal part. And if I could have the table
11 where we're saying that. We're saying that based on
12 this statement made by Steyr, the assembly pin is not
13 part of the multifunction part. We're not putting words
14 in their mouth. This is their admission. Now granted
15 there was a big fight in various foreign patent offices
16 over the importance of this lever shaft. It's a
17 separate limitation. The multifunction part in the
18 patent itself isn't the lever shaft. A lever shaft is a
19 very specific type of shaft. They tried initially in
20 Europe I believe to get just the term shaft like they
21 did in the U.S. to get broader coverage, and they had to
22 reduce, they had to put this disassembly lever shaft and
23 they had to admit, this is in our other briefing, they
24 had to admit that's a very specific thing. So, this is
25 a separate argument. The stuff you see in the Kel-Tec

1 invalidity stuff, this is a separate issue. This is
2 very plain statement as to whether the assembly pin is
3 part of the multifunction part, and they're saying it's
4 not. So, that's an admission and that's the type of
5 thing you'll leave that to the jury. This is precisely
6 the work that we believe the Court is empowered to do
7 based on Phillips and O2 Micro and Apple and Gillette
8 and other cases we cite that are specific to the
9 admission point and the more general ones I mentioned a
10 moment ago.

11 I don't believe my brother put forward any
12 support for its position that the claimed locking is the
13 way that the barrel's positioned in figure one. I don't
14 believe those passages are supported. You can look back
15 over the transcript. I believe all he's showing is
16 figure one and saying someone looking at this would have
17 said this is the locking. What is described as the
18 locking is the fact that there are control attachments
19 that engage with the multifunction metal part. What is
20 disclosed is potential locking is locking the barrel to
21 the frame, but that's not locking the barrel in the
22 barrel slide because as the Court's aware from the
23 video, which I can bring back up -- so as you can see
24 from the animation in the video, what we're dealing with
25 at most is a barrel locking to the MMP. The barrel

1 slide continues to move independent of the barrel. So
2 the only quote, unquote, potential locking that's being
3 described is not what's being claimed.

4 In any event, your Honor, unless you have
5 further questions, I've addressed the points I wished
6 to.

7 THE COURT: All right, that's fine.

8 MR. KAVIAR: Thank you, your Honor.

9 THE COURT: All right. Well, thank you very
10 much for your presentations and the Court will take the
11 matter under advisement.

12 (Hearing concluded at 11:55 a.m.)

13

14

15

16 C E R T I F I C A T E

17

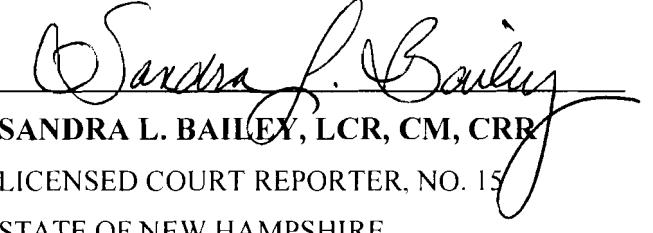
18 I, Sandra L. Bailey, do hereby certify that
19 the foregoing transcript is a true and accurate
20 transcription of the within proceedings, to the best of
21 my knowledge, skill, ability and belief.

22

23

24 Submitted: 1/8/2019

25


SANDRA L. BAILEY, LCR, CM, CRR

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